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ABSTRACT

Primarily historical, the study examines the case of one absentee Native American band struggling to establish its identity and directions for a more prosperous future, and projects the implications of their situation for their intercultural relations. The central research question asks what are the intercultural communication problems which result from the questionable status of the Mississippi Band of Choctaw? Major sections elaborate on the current status of the band; salient issues entailed by their current status are identified; and implications of intercultural communication are discussed. (Author/PB)

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THE CASE OF THE MISSISSIPPI CHOCTAW

By

L. Brooks Hill and Philip Lujan

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RHETORIC OF SELF IDENTITY:
THE CASE OF THE MISSISSIPPI CHOCTAW

By L. Brooks Hill and Philip Lujan*

A conference entitled "Rhetoric of the Contemporary South" conjures up innumerable images and expectations. The study of Native Americans or Indians hardly numbers among the likely expectations. To neglect these ethnic minorities, however, represents a very serious oversight. When the nineteenth-century expansion of the United States moved many Indians west of the Mississippi,[1] that series of events concealed the large numbers of these people who remained in their southern homelands. Throughout the southeastern United States are pockets of Native Americans. Most of these groups suffer from their absentee status.[2] These people are often deprived of federal assistance provided their western counterparts, and because of reduced numbers, less federal assistance, and cultural differences do not often have the power to overcome their poor circumstances. With the current, national trend toward cultural pluralism and ethnic identity, these absentee groups are struggling more vigorously to regain their identity, respect, and federal attention.

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This paper examines the case of one absentee Native American band struggling to establish its identity and directions for a more prosperous future, and to project the implications of their situation for their intercultural relations. The central research question asks what are the intercultural communication problems which result from the questionable status of the Mississippi Band of Choctaw? Three major sections comprise this paper: The first section describes the current status of this group. The salient issues entailed by their current status are identified in the second section. The implications for intercultural communication are the focus of the final section. Methodologically, the study is primarily historical and preliminary: From the historical description we attempt to conceptualize the situation in terms which will facilitate more empirically oriented field research.

Current Status

The present confusing status of the Mississippi Choctaw derives from a unique historical relationship with the federal government and a modern legal contest of jurisdiction with the state government which grew out of their past. To understand their specific historical relationship, one must consider the general treatment of Indians by the federal government. Although it may appear tedious, this overview is also necessary to understand the two recent Choctaw cases. Many minor legal technicalities will be summarized but not discussed to render the complex total situation more comprehensibile.

Historical Review

The Choctaws trace their legal relationship with the federal government to 1786 when the first in a series of treaties was signed.[3] The act of signing a treaty was an implicit recognition by the federal government of the autonomous and self-governing authority of Indian tribes. When the U.S. was still a relatively weak nation it needed sufficient tranquility on its borders to insure stable growth. The practice of treating with Indian tribes did not cease until 1871 when the U.S. goverment felt secure. This treaty of 1786 defined the northern border of the Choctaw Nation. Following this initial treaty, a series of seven others culminated in the Treaty of Dancing Rabbit Creek in 1830. The Treaty of Dancing Rabbit Creek ceded the last of the tribal land held in Mississippi which was 10,500,000 acres. This figure, when added to the territory ceded by the various previous seven treaties, totaled 23,119,964 acres.[4]

The Dancing Rabbit Creek treaty was the final mechanism to accomplish the removal of the Choctaw from Mississippi. Unquestionably, the governmental policy encouraged removal; however, to avoid another Cherokee tragedy a provision allowed individual Choctaw families to remain in Mississippi. Persons opting for this alternative were allowed 640 acres per head of household and a lesser acreage for children and other family members who remained in the household. Those Choctaws remaining became citizens of the state and forfeited their trust status in five years. Most of the Choctaws moved to Oklahoma, but approximately 5,000 remained in Mississippi.[5] The option to join their departed tribesmen in

Oklahoma, plus federal incentives, were enough to pare the original 5,000 to around 2,000 by the early 1900's.[6] There is little controversy that the federal relationship with these remaining Choctaws was severed; however, the treaty contained no provision concerning their future disposition. Several individuals who represented themselves as Choctaws unsuccessfully sought recognition and thus federal benefits. This group of people was separate from those full-blood Choctaws who remained under the provisions of the 1830 treaty.

For the most part, the Mississippi Choctaws lived in proverty and anonymity among their rural neighbors. Unfortunately, this anonymity extended to the Mississippi state government. In the Supreme Court case, Winton v. Amos, 255 U.S. 373 (1921), the court noted that the remaining Choctaws were denied state services and all social and political privileges. This apparent lack of responsibility by the state prompted the Mississippi congressional delegation to secure federal aid for the Mississippi Choctaws. If obtained, this would place them de facto within the traditional framework for providing trust services and the Bureau of Indian Affairs (B.I.A.). To assess their situation, the B.I.A. sent special agents to the Choctaws in 1908 and 1916. Their reports of the poor economic and health conditions prompted federal action. In 1918 Congress passed a Relief Act which appropriated money for the establishment of an Indian agency, for construction and maintenance of day schools, and for the purchase of land and the encouragement of farming and industry.[7] The agency was established quickly, and seven day schools, one in each of the Choctaw

communities, were built by 1930. A B.I.A. hospital was opened in 1929. Moreover, between 1918 and 1931, Congress passed twelve specific appropriation acts for the Mississippi Choctaw.[8]

At this time the Choctaw benefited from a national change in federal policy toward Indian tribes in general. The Indian Reorganization Act (I.R.A.) of 1934 represented an attempt to strengthen tribal governments and recognize their inherent autonomy.[9] This act changed the assimilationist policy of the Indian allotment era by ceasing allotments and extending the trust status of Indian lands indefinitely. It also provided an organizational charter for Indian governments and delegated congressional power to establish reservations to the Secretary of the Interior. The Mississippi Choctaw voted to organize under the provisions of the I.R.A. in 1935. Four years later the Interior Department sponsored an act which placed all of the land purchased for the Mississippi Choctaw since 1918 in trust by the United States.[10] House Report No. 194, 76 Cong., 1st Sess., stated that one of the purposes of the 1939 act was to facilitate matters if the Choctaws chose to organize under the I.R.A. The final link in this chain of federal events was a proclamation issued by the Secretary of Interior on December 4, 1944, F.R. Doc. 44-19063. This proclamation recounted the past federal action discussed above and then declared the Choctaw lands to be an Indian Reservation for the benefit of the members of the Mississippi Choctaw.

The Mississippi Choctaws have worked steadily with federal assistance to develop the services provided by the tribal government.

A demographic survey performed in 1974 revealed that 3,783 Choctaw Indians of at least half-blood lived on or near the seven village communities.[11] The seven communities which remain as cultural centers are Bogue Chitto, Bogue Homa, Conehatta, Pearl River, Red Water, Standing Pine and Tucker. A fascinating statistic provided by the study is that 80% of the Choctaws surveyed speak Choctaw in their homes as their primary language. In contrast only about 7% primarily speak English in the home. Bilingual Choctaw-English programs are offered in the elementary schools and the recently completed Choctaw Central High School. The tribal government is housed in a modern complex of office buildings built with federal assistance.

A significant effort of the Choctaws has been the establishment of a tribal court system. Law enforcement is provided by tribal members who are trained and salaried by the B.I.A. The tribal court is a Court of Indian Offenses which is established and supervised by the Secretary of Interior to enforce a code developed by the B.I.A. In 1974, a tribal jail was completed, eliminating the necessity of using local county jails considered unsafe for Choctaw inmates.[12] A juvenile offender program was initiated in 1968 using the facilities of a recently completed tribal youth center and tribal foster homes. Following a recent (1977) decision of the Fifth Circuit Court of Appeals, tribal law and order and the tribal court system's operation were suspended. However, they have been resumed upon the acceptance of certiorari by the Supreme Court pending the final decision which was handed down last Friday, June 23, 1978.

Recent Cases

Since 1944 the Mississippi Choctaw have enjoyed the advantages of federal recognition and trust status. This includes health benefits, education, and general federal development support. The tribe has steadily increased its sophistication within the federal funding process. This increasing federal support has brought needed jobs to the reservation. Nothing had arisen to question the basis of that federal support prior to 1972. The legal issue of the present Choctaw status arose as a consequence of a complex sequence of events that involved a civil suit and a criminal case. Specifically, the federal trust status question arose in a civil suit initiated in 1972 by the federal government acting in its trust capacity and as a result of two persistent Choctaw individuals indicted by both the federal and state courts for an identical incident occurring in 1975.

Events leading to the civil suit began in 1965. The Choctaw tribal council, pursuant to federal regulations, established a Choctaw Housing Authority necessary for participation in the Department of Health, Education and Welfare's housing programs. To facilitate the building of more homes on a specific grant amount, a non-profit development company was incorporated in 1970. This corporation was incorporated under Mississippi law to perform the actual construction of the Choctaw homes. The decision to incorporate under state law was a serious tactical error, because other options were available to the tribe given their federal status. This development corporation was subsequently awarded a large contract, and construction of homes began. The State Tax Commission

then assessed the corporation a tax based on the federal contract. The corporation and the tribal council ignored the assessment on the basis of their tribal status and a special exemption for the Mississippi Band of Choctaw which had been passed by the Mississippi State legislature in 1968. This special exemption, apparently lobbied for by the Mississippi Choctaw, was also a tactical error. Given the federal status of the tribe, the state act was superfluous and only strengthened the state's impression that its laws had effect on the reservation.

The Tax Commission subsequently filed a notice of a tax lien for approximately $19,000 against the corporation. Neither the corporation nor the tribe attempted to pursue its state remedies. Thus, in 1972, the United States in its role as trustee filed an action in federal district court seeking an injunction against the state tax commission.[13] For procedural reasons the district court did not allow the federal government to pursue the action. The development corporation proceeded, and the court eventually ruled in favor of the corporation. The court then enjoined the tax commission from pursuing any assessment action. The tax commission appealed the decision to the United States Fifth Circuit Court of Appeals. At the appeals level the tax commission prevailed. In reversing the lower court's decision, the court held that the development corporation did not partake of the sales tax exemption granted the Choctaw Tribe in 1968 and was a separate entity incorporated under and bound by Mississippi law. If the decision had stopped there, the Choctaws would merely have needed better legal advice concerning their federal status in future business ventures.

However, the court continued and further stated that the tribal character and federal relationship of the Mississippi Choctaw ceased with the signing of the Treaty of Dancing Rabbit Creek in 1830. Furthermore, this termination of federal status was not rehabilitated by either the Indian Reorganization Act or the Department of Interior's proclamation of 1944, classifying the Choctaw lands a reservation and the tribe federally recognized.

The court reasoned that only "Tribes" could organize and partake of the advantages afforded by the Indian Reorganization Act. Since the "official" Choctaw tribe had removed to Oklahoma, what remained in Mississippi was merely an assemblage of Choctaw individuals. They were not a tribe but state citizens. Thus, the Interior's proclamation was also null and void, because it derived its basic authorization for granting of reservation status from the Indian Reorganization Act. This decision has created a unique situation, because Indian tribes usually sue the federal government for recognition. Here the federal government is actively endorsing recognition, and the state courts have declared such endorsement was without legal effect.

Although dissatisfied with the result, the U.S. Solicitor General's office did not appeal the Circuit Court's decision. They decided that the criminal case discussed below presented a better fact situation upon which to proceed. Thus the initial civil case questioning Choctaw tribal status had a rather anticlimactic ending. It did, however, cause frightening alarm to the Choctaw tribal government. The total amount of federal support to the tribe for the fiscal year 1976 was in excess of $10,000,000.[14] Although

these personal matters were discounted by the court, the threat to the tribe was real because federal legislation consistently required federal recognition as a prerequisite for tribal participation.

The broad holding of the Fifth Circuit Court of Appeals concerning Choctaw tribal status was revitalized within a criminal context. This criminal case has reached the Supreme Court in the form of two separate actions which have been consolidated because of the similarity of their issues. The titles of the two cases are United States v. John[15] and John v. Mississippi.[16] The essential issue in each case is the question of federal jurisdiction versus state jurisdiction. This issue in turn revolved around the legal status of the Choctaw tribe. For the sake of manageability the facts of the case and the complex jurisdictional issues will be summarized.

In 1975, two Choctaw men, Smith John and his son Harry Smith John, were indicted and tried before a federal district court for assault with intent to kill within Indian country pursuant to federal statutes. The defendants were charged with assaulting a non-Indian, Artis Jenkins, who was attempting to collect a debt upon land which was Choctaw trust land. The jury acquitted the defendants of the assault with intent to kill charge but convicted them of the lesser included offense of simple assault. Defendants were then sentenced to 90 days and fined. The sentence was served and the fine paid.

The defendants appealed this conviction, because under the U.S. law, they contend, exclusive jurisdiction over simple assault

by an Indian occurring in Indian country lies with the tribal court. They did not contest the jurisdiction of the federal court in Indian country but the extension of federal jurisdiction through the lesser included offense. This is the case titled United States v. John. The appeals court rendered its opinion on October 11, 1977.[17] It denied the appeal holding that the Choctaw lands where the incident occurred are not "Indian country" and, therefore, the federal district court had no jurisdiction over defendants to try them on any charge. This had the effect of creating an agreement with the Mississippi Supreme Court decision reached earlier. Both decisions validated state jurisdiction and negated federal jurisdiction.

The assertion of state jurisdiction began in April, 1976, when the defendants were indicted by a Mississippi county grand jury. The charge was aggravated assault under Mississippi statutes. This indictment was based on the identical incident concerning Artis Jenkins for which the defendants had been tried and sentenced in federal court. Defendant's procedural attempts to dismiss the charges concerned double jeopardy and exclusive federal jurisdiction over the offense. All of their arguments were denied, and they were tried in state court, convicted, and sentenced to two years in the state penetentiary. This conviction was appealed to the Mississippi Supreme Court based on their previous arguments to have the charges dismissed. The Mississippi Supreme Court affirmed their convictions. This appeal is titled John v. Mississippi. The State Supreme Court reached their decision prior to the Fifth Circuit Court of Appeals decision in United States v. John, discussed above. The state court held that Choctaw land was not Indian

country, and, therefore, the federal court had no jurisdiction. This effectively mooted the defendant's double jeopardy and exclusive federal jurisdiction arguments. Defendants served eight months of their state sentence and were released on bond pending the outcome of their appeal. One of the defendants, Harry Smith John, is now deceased.

Salient Issues

Despite the complex procedural aspects of the recent criminal cases, the central question for the Mississippi Band of Choctaw is whether the sequence of federal actions begun in 1918 and ending in 1944 were legally sufficient to reestablish them as a tribe. Even though this question was answered last Friday in their favor, the underlying problems implied deserve continued concern. The substantial concerns underlying this decision are the viability of the legal system as a tribal remedy, the legal sufficiency of federal action, and Indian law problems in general. From the basis of these legal concerns, this section will then examine some related economic and social implications.

Legal Issues

The Mississippi Choctaw's struggle for legal and cultural recognition is a classic example of the frustration associated with the ineptness of our adversary legal system. The American legal system is not designed to handle policy issues such as those involved in Indian cases. The ideals of the system are the establishment of factuality and the application of precedent to the factuality. This is accomplished, insofar as possible, through the application of objective criteria and a plethora of technical procedures. Concerning

Indian tribes, the system has many shortcomings. For example, its expense and delays are serious problems, because tribes have little tribal money and often need rapid solutions; the criminal cases presented above were begun in 1975 and three years is a long wait for a decision that affects tribal planning and federal funding cycles. The federal government is also obligated to defend tribes, but this is by no means an enforceable right. In fact, this often merely gives the government a veto of tribal litigation desires.

Time also becomes a serious factor through the application of the doctrine of precedent. Past decisions function as a constraint on future decisions. Having precedent or a line of cases which reflect one's case gives that party a considerable advantage. Regardless of the volume of favorable Indian cases, this is still a problem. The quantity of cases is misleading, because the federal government recognizes over three hundred and sixty tribes. Every tribe is unique and despite certain similarities, generalizations are dangerous. Thus, an ill-advised law suit advanced by a tribe with a weak case can hurt other tribes with entirely different circumstances or lead to unnecessary cases filed out of confusion. Although decisions are formally limited to the particular case, as a practical matter they often have the effect of establishing law for all tribes.

Because the stakes of legal litigation are high, each side must exploit every procedural advantage possible. This compounds the time and cost problem. More substantially, however, minor procedural points often have the effect of providing a decision, without an examination of the actual merits of the case. Whereas this

works to the advantage and disadvantage of both sides, tribes are often seeking a definitive statement of their situation which is not conclusively provided in procedural histories. This is further aggravated by judicial attempts to avoid broad decisions. Considering these problems at a personal level the Indians are perplexed by a system so procedurally oriented and which avoids definite conclusion, casts their fate in abstract concepts, and decides it in remote places.

More specifically, several legal issues from the criminal case deserve attention. To discuss all of the arguments and variations of those arguments presented by the various interests in these cases is not feasible. Briefs have been filed by the State of Mississippi, United States, individual Choctaw defendants, and the Mississippi Choctaw tribe. Anyone wishing to pursue the issues in detail should read the briefs. However, during oral argument before the Supreme Court, interest centered around the arguments concerning the Indian Reorganization Act.[18] Because of its importance to the court and to the Choctaw, we will examine this aspect and extend its implications.

The Fifth Circuit Court of Appeals and the Mississippi Supreme Court both construed the Indian Reorganization Act as limited to Indian tribes living on reservations already in existence in 1934. Section 7 of the act authorized the Secretary of the Interior to proclaim new reservations on lands purchased pursuant to the act. The use of this provision to justify the Interior's proclamation of 1944, which recognized the Mississippi Choctaw as a tribe, is the tribe's strong point. The state maintains that Section 7 applies only to Indians living under federal tutelage and Indians who did

not wish to give up their tribal affiliation. Since the Treaty of Dancing Rabbit Creek, they assert, the Mississippi Choctaws have not lived under federal tutelage. The tribe, on the other hand, argues that to accept the state's contention would render Section 7 meaningless; it could only be applied to situations not needing federal recognition because they already had it.

The argument considered toughest by defendant's co-counsel Richard B. Collins concerned Section 19 of the act.[19] This provision defined "Indian" for the purposes of the Indian Reorganization Act as members of tribes, their decendants living on reservations in 1934, and all other persons of one half or more Indian blood. The final clause appears to clearly include the Mississippi Choctaws and thus work in their favor. However, it causes problems for the tribal position, because previous Supreme Court decisions have asserted that the special Indian status is a political relationship and not a racial relationship. Thus, tribal citizenship, which traces through the tribe to the treaty relationship with the federal government, is not simply a matter of those who are individual ancestors of Indian people. The state has maintained all along that the Choctaws are racially Indians, but not politically Indian. The lawyers arguing the tribal position assert that the phrase still refers to a political connection, because Congress was attempting by their definitions to insure that the act had a broad beneficial effect but was still limited to descendants from an Indian tribe close enough to justify the special status. Thus, Indians of a lesser blood quantum than one-half were not sufficiently politically related to the Indian tribal problems which justify

their trust status. These definitional problems may appear insignificant, but they attracted the court's attention and further provide an excellent example of the difficulty of litigation to focus on substantive concerns, rather than legal minutiae.

The jurisdictional conflict surrounding the status of Indian tribes has continued from the 1830's with the early Cherokee cases. The precedent established in those early cases is still applied. The main proposition is that without express congressional consent, state law has no application on Indian reservations. The plenary power of congress to control Indian affairs and the guardian-ward concept were also established. At first only an analogy, the guardian-ward relationship has provided the legal foundation through judicial doctrine to justify recognition of tribal governments and provision of federal services. The notion of the federal government acting as the trustee for Indian interests was also functional to the federal government as a convenient means to advance federal superiority over states. Through the courts, the federal government has consistently and jealously guarded its superintendance of the trust relationship against state intrusion. When Indian tribes have lost in court they have primarily lost in relationship to the federal government's power and not states. Despite the confusion, Indian tribes have benefited from the conflict between the extension of federal power and the resistance of state governments. They also realize that if someone must regulate, the federal government is preferable to the state. Thus the legal framework was established to allow the federal government to regulate almost every facet of Indian people's lives. This regulation has brought both frustration and satisfaction to Indian people.

The federal-state conflict over Indian status has resolved itself into an uneasy truce. In the western states with a large concentration of Indian reservations practically every fact situation in relationship to tribes has been litigated. States have always resented the existence of what they consider to be "Islands" of jurisdiction within their territory. National forests, federal enclaves and military bases are tolerated; their relationship to the national welfare is direct. However, the perpetuation and promotion of Indian tribal sovereignty has always tried the patience of the states. This is particularly vexing to the state because the Supreme Court has consistently resolved ambiguity of documents in favor of Indian people. The court will also usually defer to the supposed expertise of the federal administrative branch concerning the discharge of the trust responsibility.

In fairness to the states it should be noted that the unique relationship between the federal government and Indian tribes is a peculiarity within our federal system. In fact, the relationship represents an anomaly to the modern and consistent desire for uniformity; instead of deriving from a singular perspective it was fabricated as a combination of differing perspectives to meet the needs of both Indian people and the federal government. Nowhere else has a government that has conquered an indigenous native people given those people the local governing power and legal recognition enjoyed by the American Indians. Mississippi is relatively fresh to this anomalous area of federal law. But like her sister states with Indian reservations, who have probed limits of their state sovereignty in relationship to Indian tribes, the threat to Mississippi sovereignty is clear.

The threat to tribal survival and sovereignty is also clear. Mississippi has demonstrated by past behavior its inability to provide full citizenship and recognition of the tribal concerns for survival. Indian people have fared well in the Supreme Court. They are accustomed to losing at every level until the Supreme Court. The complex historical background of the Mississippi Choctaw and its present legal posture embodied in the two criminal cases recently before the Supreme Court fit this pattern well. Their resolution temporarily favors the Indian, but another day on other issues the inherent controversies will surface over again, informally or formally, depending on the strategies employed by the different parties involved.

Economic and Social Implications

The legal issues confronting the Mississippi Band of Choctaw closely relate to the economic issues. As the case of Chata Development Corporation v. Mississippi Tax Commission revealed, the tax exempt status of the corporations is very important.[20] If several corporations are formed, each tax exempt and competing with other existing businesses, not only does the state lose revenue from the Indians, but from other businesses which pay taxes as well. Other extensions of tax exemptions are also likely, as cases in other states have already permitted exemptions from state income tax derived from activities within the reservation and from taxes on cigarettes.[21] The impact of the tax exemptions will ultimately affect the limited tax base and entire economy of a sparsely populated, rural, agricultural county.

Without tax revenue, other issues surface. How, for example, does the county provide services in areas of questionable jurisdiction? Chances are that the county will provide few, if any, services, thus worsening the circumstances of the Indians. A favorite ploy of the states and counties has been the attempt to direct Indians desiring state services to the B.I.A. In reality states are obligated to provide services to Indian people, even though non-taxed. Arizona, which contains the majority of the Navajo reservation, has led the unsuccessful state resistance to the extension of state services to Indians.

The jurisdictional problems are also irritating to counties which realize they have very little control over how the Indians use their land. They may confound zoning provisions, oversaturate the community with certain businesses, or minimize use of non-Indian lands adjacent to reservation lands outside of state control. Many Indian tribes view zoning and establishment of environmental protection law as an unfair limiting of tribal industrial development. Tribes late to the industrial development area feel controls are specifically aimed at restricting tribal development. An analogous situation arises over fish and game regulations. Now that their lands are recognized as reservations, Mississippi Choctaws will be exempt from state fish and game regulations on that level; state licensing, seasonal limitation, and bag limits illustrate the exemptions.

When federal money moves into a poor, rural county, other problems surface. Because federal salaries are nationally competitive, the federal money tends to inflate the local economy, artifically

producing disparities which create difficulties for many of the citizens who cannot match the inflationary cycle. Often times, non-Indians hold the federal jobs and return to the general community where the salary disparity is more conspicuous. Not only are the economic disparities conspicuous, but community members who seek those jobs encounter federally sanctioned preferential hiring of Indians for those lucrative positions.

A final and even more perplexing economic problem stems from Indian tribal competition for federal money. The federal money is conceived as a limited pie; the more times one cuts it up, the smaller the pieces for each one served. Thus, other Indian tribes may not fully support the Mississippi Choctaw or another struggling group in order to keep from further sacrificing their own welfare. In fact, during the recent litigations of the Mississippi Choctaw, government agencies such as H.E.W. and H.U.D. were scrutinizing federal assistance to a group in questionable status. Had these agencies not investigated, other Indian tribes may well have initiated inquiry concerning federal support for an unrecognized group. To non-Indian observers of Native Americans, the tendency to presume Indian unity is likely, but thus very inaccurate. The politics among Indian groups, even intra-tribally, is often divisive and non-productive. Thus, one tribe may keep another from federal money to protect their own self interest.

Growing out of the legal and economic issues are several social and political implications. Because of the economic problems associated with their tax exempt status, lack of controlled land use, the inflated economy, and a general misunderstanding of the rationale for special Indian privileges, local communities are often hostile

in their discrimination against Indians. This discrimination, in turn, creates a distance between the Indians and other member of the community which perpetuates distrust and misunderstanding by each group. One of the particularly salient issues here involves the overculture's "theft" of orphaned Indians. Adoption and foster home laws and standards are established by the states. Because of their poverty, Indians often cannot meet such standards, especially requirements concerning specific minimum ratios of home floor square footage and window space. Given these inadequacies, the Indians cannot adopt orphans of their fellow tribal members. In fact, on most reservations under state control, over 90% of Indian children up for adoption go to non-Indian families, thus creating problems of cultural transmission and maintainence, as well as grave distrust of the overculture.[22]

People in our society generally resent special perquisites unless they are receiving them. When these same people see the preferential treatment of Indians by the federal government, they react negatively. This reaction is also not limited to the public majority, but other ethnic minorities as well, especially Blacks. Were one to survey the non-Indian residents of the Choctaw occupied counties in Mississippi, we suspect the level of ignorance about the federal government's relation to Indians would demonstrate well this basic aspect of the discriminatory behaviors. This problem grows when confused with the different notions of civil rights in the South. To most southerners civil rights refers to forced integration and is identified with Blacks. This concept of civil rights is inapplicable to the guardianship the federal government maintains

regarding Indians; in fact, the federal policy toward Indians is the continued maintenance of their separateness. This distinction is typically misunderstood, thus perpetuating and intensifying the aggravation over special privileges.

Internal tribal politics also confounds the unity of Indian groups. The problems here often result from the curious efforts of Indians and the federal government to graft the political system of the overculture on their tribal political system. The product of this grafting is often unwieldy, violates cultural norms more deeply entrenched, and leads to non-productive in-fighting. One example of these difficulties is nepotism. Select families traditionally tend to dominate Indian tribes. That approach is inconsistent with the procedures of democratic government and often produces intense family controversies and power struggles. In some instances, democratic elections have created new political groups eager to extend their influence into areas formerly held by traditional family or other leadership groups. Half-bloods or less, whose participation was traditionally limited, are now able to participate fully. The impact of this will be further aggravated by the increasing intermarriage rate. Indeed, some day such people could hypothetically vote the tribe out of existence and liquidate its assets.

The internal and external social and political issues which confound the Mississippi Band of Choctaw tend to generate a broader problem of which way to turn. If they seek assimilation into the broader culture of the area, they are confounded by the ignorance and distance between them and the non-Indians of their communities.

If they seek segregation and cultural separation, then they must devise a means to unify their scattered populations and channel their political activities constructively and collectively. Vacillation of federal Indian policy certainly does not clarify this situation, but without this assistance, their chances are weakened.

The legal, economic, and social issues which confront the Mississippi Band of Choctaw are several. This section identified some of the salient obstacles in their struggle for tribal status and identity. Combined with the general description of their current status in section one, these salient issues provide a transition to the more specific level of rhetorical strategies used to address their problems.

Communication Implications

To understand anyone's communication behavior necessitates comprehension of their rhetorical situation.[23] The preceding history and issue analysis posit a general framework within which to study the intercultural communication of the Mississippi Choctaw. That perspective, however, is alone insufficient, for within that context many alternatives are possible. To characterize their situation more specifically, we need to lower the level of abstraction and enter the social-psychological framework within which these people are compelled to function. This section provides such a perspective.

Strategies of Social Oppression

Presuming a crude stimulus-response orientation, one can understand the behavior of an individual, group of individuals, or

subculture by first examining the patterns of behavior used in dealing with them by their overculture. Put another way, if one seeks to describe the particular behaviors of an oppressed subcultural group, then first consider the strategies and tactics employed by the overculture or dominating groups. Thus, this subsection asks how do people from the overculture of Mississippi keep an individual or group such as the Mississippi Band of Choctaw in a situation where they can be controlled, manipulated, or otherwise "kept in their place."

The strategies imposed range from careful use of the legal system of the overculture to openly illegal activities. Commencing with the more legal, one of the first approaches used in Mississippi involves taxation. Given the need for sufficient taxation to govern a politicality, several alternative means are available in our society, e.g., property, sales, income, and other types of taxation or combinations of them. Some of these taxes assess the powerful and wealthy of a community who possess sufficient wherewithal to avoid their full share or to channel their share more directly into self-serving projects. In Mississippi, as well as several other states, politicians avoid heavy property taxes for fear of offending the powerful land owners. In states where Indians reside, their property is often exempt from taxation anyway. To tax the Indians and non-property owners requires other means. To maintain social control of minorities so that wealthier, more influential groups can maintain their self interest, criminal taxes are sometimes used.[24] These are taxes which accrue from fines of various legal violations. This taxation not only deprives the subcultural

groups of economic opportunities to break their cycle of oppression, but also deprives their individual members of the time to address economic and other problems of their families and groups. To illustrate this system of selective taxation, one need look not only at Mississippi, but throughout the country where wealthy suburbs channel much of their tax money into school systems for their children while less prosperous neighborhoods are penalized. Whereas we are nationally addressing that taxation problem, we are doing much less with the strategy of selective law enforcement and the consequent manipulation of criminal taxation. When, however, .01% of your county's population is Indian and over 60% of your criminal cases involve Indians,[25] one can reasonably identify selective use of criminal taxation as a strategy employed to keep the Mississippi Band of Choctaw in their place.

A less specific, though legal, strategy to maintain control over a subcultural minority is to capitalize on their ignorance of the intricacies of the governing system of the overculture. This strategy might best be labeled the controlled use of confusing ambiguity. Examples of this strategy abound in Indian communities where the people are perplexed by conflicts between the state and federal government; by the vacillation of the federal government from a position of guardianship to a position of autonomy for Indians; by inconsistent implementation of federal policies by B.I.A. employees; by the jurisdictional problems reflected in the Smith John case; and by the general ambiguities of a legal system which requires expensive advisors to keep your position legal, as in the

incorporation errors of the Chata Development Corporation. This strategy often involves a failure to inform people adequately of their rights and, then when they do act, to use "gotcha" games against them which are reminiscent of Joseph Heller's Catch 22.[26] In Mississippi this strategy often involves the subtleties of out-of-court plea bargaining which circumvents costly litigation but still results in costly penalties for the defendant; this is further manipulated to make those in power appear benign and benevolent instead of manipulative, perhaps a twentieth-century version of "noblesse oblige."[27] The confusing ambiguity is also evident in other domains such as business and credit systems, or in education where we persuade the minorities to accept the myth that education equals opportunity, when often education simply means little more than greater awareness of the lack of opportunities and frustrations.

Shifting to less legal means of oppression, most social systems entail some marginally legal, if not clearly corrupt and illegal, activities which become institutionalized. These systems of corrupt or quasi-legal activities become interwoven with the legal system and sometimes go unnoticed, neglected, or skillfully disguised; this leads to selective enforcement of laws and abusive use of legal powers, especially by police. In Mississippi bootlegging and gambling illustrate these activities. Typically, these activities are provided subcultural groups, but those individuals are not allowed to participate in the lucrative administration of these "businesses." Accordingly, Choctaws in Mississippi are

welcome to patronize bootleggers, but not to become bootleggers. One of the complicating aspects of the Smith John case, for example, was that he and/or some members of his family, were bootlegging. During an incarceration, one of Smith John's sons was beaten by none other than Artis Jenkins (the victim in the Smith John case), then serving as a constable, to "urge" the Smith Johns not to bootleg.[28] This non-legal system generates a local set of informal norms which are very difficult to deal with, because they often carry the force of law; i.e., by selective law enforcement the authorities can indirectly use the power of the law to punish violators of the informal norms of the corruption network.

Artis Jenkins' abuse of Smith John's son during an incarceration also illustrates a fourth strategy used to control the oppressed. This strategy is the use of the established authorities to intimidate. The rural constabulary often comes from the lower middle class, endorses the middle class values, and is especially susceptible to pressures from the more powerful members of their community who control their social advancement and threaten loss of what little the legal guardians might have. Thus, the powerful can readily utilize the police and other "civil servants" to keep the even less powerful subcultural groups in place. The techniques typically employed are selective law enforcement and failure to fully inform people of their rights and options. This strategy is further enhanced because

persons who are slightly above the lowest social groups often fight hardest to suppress the less fortunate in order to maintain the tenuous rung they have on the social ladder.

The most loathsome and illegal strategy of oppression is the open use of force and other abuses by persons in power. This strategy is obviously a higher risk, because it reaches the point of disgust and intolerance of even the most apathetic citizens who might tolerate the other strategies. Although this strategy is thus less desirable, it is often necessary as an occasional reminder of ultimate consequences of non-compliance with the other strategies of oppression. One repulsive example of this approach occurred during the Christmas holidays, 1977.[29] In one Mississippi county jail, fourteen Choctaws being held for various misdemeanors were confined to a twelve foot square cell adjacent to a cell where two post-conviction felons were being held pending transportation to the state prison. The jailer "inadvertently" left the door between the two cells open, resulting in several beatings and homosexual assaults on the Choctaws. If this event aggravates you, then also recognize that when the federal government in the mid 1970's built tribal jails for the Mississippi Band of Choctaw they knew of the jail conditions in Mississippi counties and were trying to save money, because up to that time they had been transporting Choctaws to counties as far away as Meridian, Mississippi; they knew of the likelihood of Indian abuse in the county jails of the Choctaw occupied counties.[30]

Social Alienation

The collective impact of the strategies of oppression presented in the preceding subsection is clearly a social alienation. In this subsection we are using the term to refer to a profile of the behavior of oppressed people as they respond to the strategies which manipulate and maintain them in place. This profile approach is analagous to the perspective of Frantz Fanon in his famous work The Wretched of the Earth.[31] In that book, Fanon, a black, French, pro-Algerian psychiatrist, attempted to profile the oppressed people he treated in his practice. Although his position overlaps that presented below, he was dealing more specifically with colonialized Africans. The following manifestations of social alienation are also interwoven, rather than discrete behavioral patterns, and typical of many Indian groups in the United States.

One of the most prominent manifestations of social alienation is frustration. This typically results from one's inability to cope, which curiously enough is often directed at oneself rather than the apparently insurmountable impositions of the overculture. This inability to cope leads, in turn, to problems interacting with other people. Examples of these interaction problems are innumerable: One finds uncritical acquiescence bordering on intransigence, and yet some of these same people are vicious with people closest to them, especially scapegoating members of their family. These problems erode one's self confidence and lead further to problems of masculinity and of diminished or irrational

family leadership which disrupt the traditional social, family unit of their tribe. When the sense of frustrations are intense, but acquiescent, the overculture has little trouble feeding on the weaknesses and encouraging a cycle of reduced potential and social impotence.

When frustrations erode self confidence, reduced motivation is a likely consequent. Because of the non-competitive world view and life style of Native Americans, the problems of reduced motivation become more debilitating. The Mississippi Choctaw are well known, currently, as well as historically, as gentle, non-aggressive, cooperative farming people who in social behavior avoid conflict. These qualities make them easy prey for an aggressive, competitive, and violent overculture. Whereas the Mississippi overculture knows how to manipulate persons of these qualities, they must keep the federal system from encroaching too far to foil the manipulative techniques. The collective effect of frustrations and reduced motivation is not only manifest in the Choctaws' culpability, but also in their sense of fatalism and negativism. At the age of 18-20, males encounter closed doors typical of mid-life crisis; in fact, the suicide rate of young male Indians is among the highest in the country.[32]

Frustration and reduced motivation also result in withdrawal and escapism. An attitude develops that since I cannot cope sufficiently, why try? But instead of atrophy, the individuals invest their time in task irrelevant behaviors--idle work

avoidance--or other compensatory, avoidance behaviors. This often leads to apathy, alcoholism and drug abuse, and other socially "irresponsible" behavior. Even among the more responsible individuals, discussion with them about their problems reveals an almost apologetic stance regarding their circumstances and a noticeable nervousness and discomfort when speaking of their plight.[33] They seem to realize their conditions, but prefer not to address the situation for fear of losing what little self respect and optimism which remain. Put another way, these people live in a sense of defeatism which not only invites further exploitation, but further entrenches the cycle of reduced potential.

Whereas frustration and reduced motivation may lead to withdrawal and escapism, they may also lead to an unpredictable aggressiveness typical of adolescent rebellion. In this condition, one who is unable to cope in socially acceptable ways, yet is unwilling to concede defeat, defends their self concept by diverting attention from their weaknesses to their forcefulness and physical and verbal aggressiveness. This, in turn, provides an appearance and/or sense of power and coping ability. As one Indian resource person noted, when I am having a beer in a bar which caters to these frustrated individuals, I feel like I am sitting in a mine field with many bombs ready to explode.[34] This condition plays into the hands of the overculture who can utilize law enforcement to take care of the individuals unwilling to assume defeat. Once these people are branded as "outlaws," they

further reduce their chances of success, because many doors are closed to former "criminals," especially of a minority background.

Each of these aspects of social alienation entails serious self-identity problems. However, the image problems are further compounded by the overall confusion of the situation. The young and old people lack a clear direction for self development. Without direction and suffering frustration, reduced motivation and withdrawal, the individuals encounter a social double bind, a paradoxical situation in which wherever one turns they cannot succeed. In this mind state a mild schizophrenia develops. On the one hand, an individual may speak of hope and prosperity, but their remarks are replete with self-denigrating behavior and fatalism. As the people attempt to break the cycle, they do not have the ways and means, and then encounter a self-fulfilling prophesy; they find what they feared of themselves and their situation are true. These punishing experiences are sometimes reflected among the youth who react to the stereotypes they encounter with an "I'll show you" approach which further enhances the stereotype not only to the overculture, but to themselves as well.[35]

Overall, these reactions to conditions imposed by the overculture are well classified as social alienation. The characteristics of frustration, reduced motivation, withdrawal, unpredictable violence, and identity problems, do not alone, nor collectively, encompass the entire syndrome of behaviors, but they do indicate

some of the primary, underlying psychological and social factors which govern the behavior of the Choctaws as they interact with members of their subculture and with others.

Alternative Exits

The preceding subsections on oppressive strategies and social alienation paint a negative picture. Unfortunately, however, that is the perspective from which the oppressed seem to view their situation. Not all is negative, however, because some exits are available for the Mississippi Band of Choctaw to cope with their conditions. This subsection examines the viable strategies employed by the subculture for overcoming the problems imposed by the overculture and perpetuated by the subculture in its negative reactions to the problems. Once again, the strategies are not all inclusive nor are they unique to the Native Americans of our society; they are, however, among the most prominent employed by the Mississippi Band of Choctaw.

Perhaps the most basic strategy is to confound the oppressors by refusing, insofar as possible, to play the game as prescribed. Because this technique requires extensive awareness of the overculture's game and system, some members of the subculture must seek careful education and training from the overculture, particularly in the professions. Unfortunately, with many minority groups, their well educated members often either remain in the overculture and do not return to help their tribe, or they return but stay only long enough to confuse. To succeed with this

strategy not only requires educated assistants, but also the need for a power base from which to resist. Furthermore, this approach will often require walking a careful legal tight rope and thus being mentally prepared to occasionally fall off. Fortunately, the occasional successes are so gratifying that they renew energy to continue. One way to employ this strategy initially is to let outsiders or non-Mississippians know the dirty linen of the inside perspective. After the Smith John case surfaced, for example, representatives of the Mississippi Band of Choctaw told about its complete details and received a vote of endorsement by the National Congress of American Indians.[36] This increases public awareness of oppressive strategies and forces the overculture to utilize their questionable techniques less openly and less frequently for fear of the consequences of public intolerance.

As a positive extension of the strategy of refusing to play the imposed game, one must substitute an alternative game in which they can exercise greater control. In the case of the Mississippi Band of Choctaw two examples are prominent. First, instead of confronting the local people in their courts where you have a history of failure, move your case to the federal and tribal courts where you have greater objectivity and chances of success. Simply to seek out federal aid and guidance more generally offers a good alternative, because this assistance can aid avoidance of local impositions. Unfortunately, this does not

always happen, because the federal aid is not used wisely. The aid often is wisely used, as in such cases as 1974 when the Mississippi Band of Choctaw built their own jails to avoid the conditions in local county jails. Second, an alternative game plan which forces the overculture into confusion is the cultural heritage strategy. By using one's ethnicity, necessary publicity and support are obtainable to wield greater influence.

An offshoot of the alternative game substitution is the strategy of exploiting the overculture's system, especially exhausting in your favor its ambiguities and internal conflicts. One example of this approach comes from the Apache near Ruidosa, New Mexico. Two streams flow together north of Ruidosa and then flow into town. The Apache already had a dam on one of the streams above the confluence. When they needed more water to fill a lake at a huge resort on the other stream, they dammed it too, and rerouted the water to their lake. Before legal action was completed by Ruidosa, the lake filled, the dam was removed, and the Apache both got what they wanted and avoided negative litigation. Usage of this exploitation strategy often involves the negotiation technique of excessive demands. Using their cultural heritage as an excuse for alleged ignorance, the Indians can make unrealistic demands which force the overculture to painfully unravel the demands and treat them realistically. This approach usually will not produce the full demands, but compromises appear so viable to the overculture that they allow substantial gains.[37] Another way to exploit the system is to play parts of it against each other.

This is a "turning of the tables" in dealing with the oppressor strategy of confusing ambiguity; only here the oppressed employ it. The use of jurisdictional difficulties and questionable legalities can force the states and federal courts into a conflict which, in turn, forces the federal courts to take up an advocacy position for the Indians against the state and local forces.

To utilize the preceding strategies of refusing to play the imposed game, substituting your own game plan, and exploiting the system requires social and economic power. Essential to this is a coalition of your own people. For the Mississippi Band of Choctaw this is made difficult by their geographic spread. However, they, like other Indian groups, can unify and thus offset their weaknesses as individuals or as small groups. One approach to unify the individuals is a further aspect of what we have loosely called the cultural heritage game. This entails the use of "nativism," whereby one uses powerful symbols of past ethnic glories as rally points for unification.[38] For example, Indian groups dig into their remote past, locate customs long since lost, and revive them to accent their ethnicity. Interestingly, these renewed grounds of self respect are sometimes fictionalized as the overculture has presented and stereotyped them, and instead of digging into their less flashy past they turn to the flashier versions of Twentieth-Century Fox.[39] Regardless of the accuracy or inaccuracy, these symbols become rallying points to maintain collective clout. Closely related to the importance of collective strength is the need for economic strength. For a rural economy such as the Mississippi Band of Choctaw maintain, many of the

techniques used by other Indian tribes will not be reasonable. Also the use of tourist trade, perhaps of dubious value in many cases, is unlikely for an area and absentee group so little known. The B.I.A. policies which allow Indians to bid for contracts to provide their own services would assist, but the confusion created in the implementation of these policies often confounds or frightens away the Indians.[40] Overall, unification, continued federal support, and prudent tribal use of their total assets may not make them wealthy, but can provide a power base for the preceding alternatives and thus a reduction of their social alienation.

Conclusion

This paper examined the situation of the Mississippi Band of Choctaw. From this examination the bases of their communication behavior and rhetorical strategies surface. These collectively reveal the struggle of one ethnic minority to establish its identity, restore their self respect, and move to a position of responsible interaction with the overculture. Even though their existence was vindicated in court, their status remains as confused as Indian law and local problems remain. In his analysis of intercultural relations, Ralph Linton concluded three general patterns of interaction are likely: inferiority-superiority, superiority-inferiority, and superiority-superiority.[41] The Mississippi Band of Choctaw currently relate to the overculture in an inferiority-superiority pattern. They do not desire to replace this imbalance with its reverse; instead they seek to

receive fair and equal treatment typical of a superiority-superiority pattern in which from mutual respect the subculture interacts with the overculture in a mutually reinforcing and productive fashion. Indeed, tribes and states are increasingly substituting negotiation for litigation. As long as the oppressive strategies continue, however, the Mississippi Band of Choctaw will suffer the social alienation they currently manifest. If the overculture reassesses its approach, they might provide alternative exits, other than those we have identified, of a more mutually beneficial sort. The likelihood of this happening without external intervention is unfortunately remote. Thus the case of Smith John represented a crucial plateau necessary to establish their continued resistance to state control. The Supreme Court's decision opened the way for the Mississippi Choctaw to use their federal recognition as a solid base to fashion alternative exits to their dilemma. If new initiatives are not undertaken, then tribal citizens will again resort to fatalism, defeatism, and violence. All of which are antithetical to the underlying rationale of allowing cultural diversity within our political system.

Endnotes

[1]See Grant Foreman, Indian Removal (Norman: University of Oklahoma Press, 1953].

[2]A splinter group of a larger tribe who did not move with the main body of the tribe is called an absentee group or band.

[3]See Angie Debo, The Rise and Fall of the Choctaw Republic (Norman: University of Oklahoma Press, 1961); and Grant Foreman, The Five Civilized Tribes (Norman: University of Oklahoma Press, 1934).

[4]United States v. State Tax Commission of the State of Mississippi, 505 F. 2d 633, 639, (1974).

[5]Ibid., 640, (1974).

[6]United States v. John, 560 F. 2d 1202, 1208, (1977).

[7]40 Statue 561.

[8]Brief of the Mississippi Band of Choctaw Indians as Amicus Curiae, John v. Mississippi, No. 775-575, 46 U.S.L.W. 3276; and U.S. v. John, No. 77-836, 46 U.S.L.W. 3401, at p. 9.

[9]25 U.S.C. subsections 461-479.

[10]53 Statue 851.

[11]U.S. v. John, No. 77-836, 46 U.S.L.W. 3401, at p. 8.

[12]Ibid., p. 11.

[13]U.S. v. State Tax Commission of Mississippi, 505 F. 2d 633, 636, (1974).

[14]See note 8 above.

[15]U.S. v. John, No. 77-836, 46 U.S.L.W. 3401.

[16]John v. Mississippi, No. 77-575, 46 U.S.L.W., 3276.

[17]U.S. v. John, 560 F. 2d 1202 (1977).

[18]Telephone interview of Philip Lujan with Richard A. Collins, co-counsel for defendants John and son, 10:30 A.M., June 23, 1978. The following information regarding the oral arguments before the Supreme Court were provided by Collins.

[19]Ibid.

[20]See pp. 7-9 above.

[21]McClandhan v. State Tax Commission, 411 U.S. 164 (1973); Fox v. Bureau of Revenue, 87 N.M. 261, 531 P. 2d 1234 (N.M. Ct. App., 1975).

[22]National Congress of American Indians, Position paper of NCAI on Retrocession and Public Law 280, adopted at P. L. 280 meeting, Denver Hilton, Denver, Colorado, November, 1975.

[23]Cf. Lloyd Bitzer, "The Rhetorical Situation," Philosophy and Rhetoric, I (January, 1968), 1-14.

[24]Telephone interview of Philip Lujan with Edwin R. Smith, co-counsel for defendants John and son, 1:30 P.M., June 22, 1978.

[25]Ibid.

[26]Also see Eric Berne, Games People Play (New York: Grove Press, Inc., 1964), especially the section on "Life Games."

[27]Lujan interview with Smith.

[28]Ibid.

[29]Ibid.

[30]See note 8 above at p. 11.

[31]Trans. by Constance Farrington (Evergreen edition; New York: Grove Press, 1966). First edition published under title Les damnes de la terre, 1961.

[32]Indian Health Trends and Services (Rockville, Maryland: Indian Health Service Pub., 1974).

[33]During 1973, in his position as field investigator for The American Indian Law Students Association's Student Rights Project, Albuquerque, N.M., Lujan worked with the Mississippi Choctaw. Observations of their behavior at that time revealed these anxieties.

[34]Authors' interview with Kiowa Indian, Norman, OK, June 20, 1978. Interviewee requested anonymity.

[35]Ibid.

[36]National Congress of American Indians, National Convention, Denver Hilton, Denver, Colorado, September, 1974.

[37]See Murray Edelman, The Symbolic Uses of Politics (Urbana: University of Illinois Press, 1967), pp. 1-22.

[38]See Ralph Linton, "Nativistic Movements," American Anthropologist, XLIV (April - June, 1943), p. 230.

[39]For an analogous situation by the Flemmings in Belgium, see L. Brooks Hill, "Belgium: A Historical Analysis of a Linguistically Divided Nation," Sociologia Internationalis, XI (1973), p. 157.

[40]See William R. carmack, "Communication and Self Determination: Social Change Among the Tlingit-Haida," paper to be presented at the SCA Summer Conference on Intercultural Communication at Tampa, Florida, July 21, 1978.

[41]Linton, pp. 234-235.